



NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Humanities

45 CFR Parts 1168 and 1174

RIN 3136-AA46

Civil Penalty Adjustments

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Final rule.

SUMMARY: The National Endowment for the Humanities (NEH) is adjusting the maximum and minimum civil monetary penalties that may be imposed for violations of its New Restrictions on Lobbying and Program Fraud Civil Remedies Act regulations to reflect the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. This final rule provides the 2023 annual inflation adjustments to the initial “catch-up” adjustments made on April 21, 2020, and August 13, 2021, and reflects all other inflation adjustments made in the interim. This final rule also codifies the statutory formula for inflation adjustments in NEH’s New Restrictions on Lobbying and Program Fraud Civil Remedies Act regulations, so that NEH may publish a Notice in the Federal Register indicating the civil monetary penalty adjustment amounts for each regulation in January 2024 and every calendar year thereafter.

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Deputy General Counsel, Office of the General Counsel, National Endowment for the Humanities, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606-8322; gencounsel@neh.gov.

SUPPLEMENTARY INFORMATION:

1. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the Inflation Adjustment Act)¹ directs each Executive agency to make an annual inflation adjustment for each civil monetary penalty provided by law within the jurisdiction of the agency, and to publish notice of each such adjustment in the Federal Register. An agency adjusts a civil monetary penalty by increasing the maximum amount of such penalty (or the range of minimum and maximum amounts, as applicable) by the percentage by which the Consumer Price Index for All Urban Consumers (CPI-U) for the month of October preceding the date of adjustment (in this case, October 2022) exceeds the CPI-U for the October one year prior to the October immediately preceding the date of the adjustment (in this case, October 2021), then rounding each amount to the nearest dollar. The formula for the amount of a civil monetary penalty inflation adjustment is prescribed by law, as explained in Office of Management and Budget (OMB) Memorandum M-16-06 (February 24, 2016), and therefore the amount of the adjustment is not subject to the exercise of discretion by the Chair of the National Endowment for the Humanities.

OMB has issued guidance on implementing and calculating the 2023 adjustment under the Inflation Adjustment Act.² Per this guidance, the CPI-U adjustment multiplier for this annual adjustment is 1.07745. In its prior rules, NEH identified two civil monetary penalties which require adjustment pursuant to the Inflation Adjustment Act: a civil monetary penalty that NEH

¹ 28 U.S.C. 2461 note.

² Office of Management and Budget (OMB) Memorandum M-23-05 (December 15, 2022).

may impose for violation of its New Restrictions on Lobbying regulation (the Lobbying Civil Monetary Penalty)³ and a civil monetary penalty that NEH may impose under its Program Fraud Civil Remedies Act Regulations (the PFCRA Civil Monetary Penalty).⁴ NEH made the initial “catch-up” adjustments to the Lobbying Civil Monetary Penalty when it amended its New Restrictions on Lobbying regulation on April 21, 2020,⁵ and to the PFCRA Civil Monetary Penalty when it adopted its Program Fraud Civil Monetary Penalties Act regulations on August 13, 2021.⁶ With this rule, NEH is adjusting the amount of those civil monetary penalties accordingly.

2. 2023 Adjustments

Two civil monetary penalties in NEH regulations require adjustment in accordance with the Inflation Adjustment Act: (1) the Lobbying Civil Monetary Penalty and (2) the PFCRA Civil Monetary Penalty.

A. Adjustment to Lobbying Civil Monetary Penalty

The Lobbying Civil Monetary Penalty is currently set at a range of a minimum amount of \$22,021 and a maximum amount of \$220,213. The post-adjustment penalty or range is obtained by multiplying the pre-adjustment penalty or range by the percent change in the CPI–U over the relevant time period and rounding to the nearest dollar. Between October 2021 and October 2022, the CPI–U increased by a multiplier of 107.745%. Therefore, the new post-adjustment minimum Lobbying Civil Monetary Penalty is \$23,727 (\$22,021 multiplied by 1.07745) and the maximum Lobbying Civil Monetary Penalty is \$237,268 (\$220,213 multiplied by 1.07745).

Thus, the range for the Lobbying Civil Monetary Penalty shall be between \$23,727 and \$237,268.

³ 45 CFR 1168.400(a), (b), (e).

⁴ 45 CFR 1174.3(a), (b).

⁵ 85 FR 22025.

⁶ 86 FR 44626.

B. Adjustment to PFCRA Civil Monetary Penalty

The current maximum PFCRA Civil Monetary Penalty is set at \$12,537. The post-adjustment penalty or range is obtained by multiplying the pre-adjustment penalty or range by the percent change in the CPI-U over the relevant time period and rounding to the nearest dollar. Between October 2021 and October 2022, the CPI-U increased by a multiplier of 107.745%. Therefore, the new, post-adjustment maximum penalty NEH's PFCRA regulation is \$13,508 (\$12,537 multiplied by 1.07745).

3. Subsequent Annual Adjustments

For subsequent annual adjustments to civil penalty amounts made in accordance with the Inflation Adjustment Act, the amount of the adjustment is based on the percent increase between the CPI-U for the month of October preceding the date of the adjustment and the CPI-U for the October one year prior to the October immediately preceding the date of the adjustment. If there is no increase, there is no adjustment of civil penalties. Therefore, if NEH adjusts penalties in January 2024, the adjustment will be calculated based on the percent change between the CPI-U for October 2023 (the October immediately preceding the date of adjustment) and October 2022 (the October one year prior to October 2023). With this rule, NEH will publish a notice of the amount of these annual inflation adjustments in the Federal Register no later than January 15 of each year, starting in 2024.

4. Compliance

Administrative Procedure Act

Pursuant to section 4 of the Inflation Adjustment Act, each Federal agency is required to publish adjustments no later than January 15 each year. In accordance with section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, most rules are subject to notice and comment and are effective no earlier than 30 days after publication in the Federal Register. However, section 4(b)(2) of the Inflation Adjustment Act provides that each agency shall make

the annual inflation adjustments “notwithstanding section 553” of the APA. Consistent with the language of the Inflation Adjustment Act, this rule is not subject to notice and an opportunity for public comment and will be effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Executive Order 12866, Regulatory Planning and Review, and Executive Order 13563, Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget for review.

Executive Order 13132, Federalism

This rulemaking does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12988, Civil Justice Reform

This rulemaking meets the applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988. Specifically, this rulemaking is written in clear language designed to help reduce litigation.

Executive Order 13175, Indian Tribal Governments

Under the criteria in Executive Order 13175, NEH evaluated this rulemaking and determined that it will not have any potential effects on federally recognized Indian Tribes.

Executive Order 12630, Takings

Under the criteria in Executive Order 12630, this rulemaking does not have significant takings implications. Therefore, a takings implication assessment is not required.

Regulatory Flexibility Act of 1980

This rulemaking will not have a significant adverse impact on a substantial number of small entities, including small businesses, small governmental jurisdictions, or certain small not-for-profit organizations.

Paperwork Reduction Act of 1995

This rulemaking does not impose an information collection burden under the Paperwork Reduction Act. This action contains no provisions constituting a collection of information pursuant to the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not contain a Federal mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year.

National Environmental Policy Act of 1969

This rulemaking will not have a significant effect on the human environment.

Small Business Regulatory Enforcement Fairness Act of 1996

This rulemaking will not be a major rule as defined in section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rulemaking will not result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

E-Government Act of 2002

All information about NEH required to be published in the Federal Register may be accessed at www.neh.gov. The website www.regulations.gov contains electronic dockets for NEH's rulemakings under the Administrative Procedure Act of 1946.

Plain Writing Act of 2010

To ensure this rule speaks in plain and clear language so that the public can use and understand it, NEH modeled the language of the rule on the Federal Plain Language Guidelines.

List of Subjects in 45 CFR Parts 1168 and 1174

Administrative practice and procedure, Claims, Fraud, Lobbying, Penalties.

For the reasons stated in the preamble, the National Endowment for the Humanities amends 45 CFR chapter XI, subchapter D, as follows:

PART 1168 – NEW RESTRICTIONS ON LOBBYING

1. The authority citation for part 1168 continues to read as follows:

Authority: 20 U.S.C. 959(a)(1); 28 U.S.C. 2461 note; 31 U.S.C. 1352.

2. Amend § 1168.400 by:

- a. In paragraphs (a), (b), and (c):
 - i. Removing “\$20,489” and adding in its place “\$10,000” each place it appears.
 - ii. Removing “\$204,892” and adding in its place “\$100,000” each place it appears.
- b. Revising paragraph (g).
- c. Adding paragraph (h).

The revision and addition read as follows:

§ 1168.400 Penalties.

* * * * *

(g)(1) The penalty amounts provided in table 1 to this paragraph (g) apply to violations of this section that occurred prior to December 31, 2023, with each row listing the penalty amounts for violations that occurred in a particular time frame.

(2) For violations of this section that occur on or after January 1, 2024, the maximum penalty range which may be assessed under this section is the larger of:

(i) The amount for the previous calendar year; or

(ii) An amount adjusted for inflation, calculated by multiplying the amount for the previous calendar year by the percentage by which the Consumer Price Index for All Urban Consumers published by the Department of Labor (CPI-U) for the month of October preceding the current calendar year exceeds the CPI-U for the month of October of the calendar year two years prior to the current calendar year, adding that amount to the amount for the previous calendar year, and rounding the total to the nearest dollar.

Table 1 to Paragraph (g) - Civil Monetary Penalty Inflation Adjustments for Violations
Prior to December 31, 2023

Date of Violation	Penalty Range
October 23, 1989 – December 31, 2015	\$10,000 – \$100,000
January 1, 2016 – December 31, 2016	\$18,936 – \$189,361
January 1, 2017 – December 31, 2017	\$19,246 – \$192,459
January 1, 2018 – December 31, 2018	\$19,639 – \$196,387
January 1, 2019 – December 31, 2019	\$20,134 – \$201,340
January 1, 2020 – December 31, 2020	\$20,489 – \$204,892

January 1, 2021 – December 31, 2021	\$20,731 – \$207,314
January 1, 2022 – December 31, 2022	\$22,021 – \$220,213
January 1, 2023 – December 31, 2023	\$23,727 – \$237,268

(h) Notice of the maximum penalty amounts which may be assessed under paragraphs (a), (b), and (e) of this section for calendar years after 2023 (calculated using the formula in paragraph (g)(2) of this section) will be published by NEH in the Federal Register on an annual basis on or before January 15 of each calendar year.

Appendix A to Part 1168 [Amended]

3. Amend appendix A to part 1168 by:

- a. Removing “\$20,489” and adding in its place “\$10,000” each place it appears.
- b. Removing “\$204,892” and adding in its place “\$100,000” each place it appears.

PART 1174—PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS

4. The authority citation for part 1174 continues to read as follows:

Authority: 31 U.S.C. 3801-3812; 5 U.S.C. App. 8G(a)(2).

5. Amend § 1174.3 by:

- a. In paragraphs (a)(1) introductory text and (b)(1) introductory text, removing “\$11,803” and adding in its place “\$5,000” each place it appears.
- b. Revising paragraph (f).
- c. Adding paragraph (g).

The revision and addition read as follows:

§ 1174.3 Basis for civil penalties and assessments.

* * * * *

(f) *Civil monetary penalty inflation adjustments.* (1) The penalty amounts provided in table 1 to this paragraph (f) apply to violations of this section that occurred prior to December 31, 2023, with each row listing the penalty amounts for violations that occurred in a particular time frame.

(2) For claims or statements made on or after January 1, 2024, the maximum penalty which may be assessed under this section is the larger of:

(i) The amount for the previous calendar year; or

(ii) An amount adjusted for inflation, calculated by multiplying the amount for the previous calendar year by the percentage by which the Consumer Price Index for All Urban Consumers published by the Department of Labor (CPI-U) for the month of October preceding the current calendar year exceeds the CPI-U for the month of October of the calendar year two years prior to the current calendar year, adding that amount to the amount for the previous calendar year, and rounding the total to the nearest dollar.

Table 1 to Paragraph (f) - Civil Monetary Penalty Inflation Adjustments for Violations
Prior to December 31, 2023

Date of Violation	Penalty
October 14, 2008 – December 31, 2015	\$5,000
January 1, 2016 – December 31, 2016	\$10,781
January 1, 2017 – December 31, 2017	\$10,957
January 1, 2018 – December 31, 2018	\$11,181
January 1, 2019 – December 31, 2019	\$11,463

January 1, 2020 – December 31, 2020	\$11,665
January 1, 2021 – December 31, 2021	\$11,803
January 1, 2022 – December 31, 2022	\$12,537
January 1, 2023 – December 31, 2023	\$13,508

(g) Notice of civil monetary penalty inflation adjustments on or after January 1, 2024.

The authority will publish in the Federal Register notice of the maximum penalty amount which may be assessed under this section for calendar years after 2023 (calculated using the formula in paragraph (f)(2) of this section) on an annual basis on or before January 15 of each calendar year.

Dated: March 23, 2023.

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